

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 68

WILBUR ROISUM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1947.

CERTIORARI GRANTED JUNE 9, 1947.

No. 10942

United States
Circuit Court of Appeals
For the Ninth Circuit.

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

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[Clerk's Note: When deemed likely to be of an important nature, errors in doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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**NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD**

DELLMORE LESSARD,

**Corbett Building, Portland, Oregon,
for Appellant.**

CARL C. DONAUGH,

United States Attorney, and

J. MASON DILLARD,

**Assistant United States Attorney,
United States Court House, Portland, Oregon,
for Appellee.**

In the District Court of the United States
for the District of Oregon

16542

UNITED STATES OF AMERICA

v.

WILBUR ROISUM,

Defendant.

INDICTMENT FOR VIOLATION OF SECTION
311, TITLE 50, APP., U.S.C.A., AND SEC-
TION 692.17 PARAGRAPH (c), SELEC-
TIVE SERVICE REGULATIONS

United States of America,
District of Oregon—ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn and charged to inquire within and for said District, upon their oaths and affirmations, do find, charge, allege and present:

That Wilbur Roisum, the defendant above named, having been duly classified in Class IV-E under the Selective Training and Service Act of 1940, as amended, and assigned to Civilian Public Service Camp No. 128, Lapine, Oregon, did leave said camp on May 27, 1944, with permission to leave and remain away for a period of one day, and did on to-wit: the 29th day of May, 1944, at Lapine, in the State and District of Oregon, and within the jurisdiction of this Court, knowingly, wilfully, unlaw-

fully and feloniously fail and refuse to return to said camp and did continue and does now continue to remain away from said camp without permission or authority, in violation of the Selective Training and Service Act of 1940, as amended, and the Rules and Regulations issued thereunder; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 21 day of September, 1944.

A True Bill.

/s/ KENNETH H. NELSON

Foreman, United States
Grand Jury

Bail \$1,000.00.

CARL C. DONAUGH

United States Attorney

/s/ JAMES H. HAZLETT

Assistant United States
Attorney

[Endorsed]: Filed Sept. 21, 1944. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of Cause.]

Now at this day comes the plaintiff by Mr. James H. Hazlett, Assistant United States Attorney, and the defendant, above named, in his own proper person and by Mr. Dellmore Lessard, of counsel.

Whereupon the said defendant is duly arraigned upon the indictment herein, and for plea thereto, says that he is not guilty as charged therein.

Whereupon,

It Is Ordered that the trial of this cause be, and the same is hereby set for Tuesday, October 17, 1944.

[2]

In the District Court of the United States
for the District of Oregon

C-16542

UNITED STATES OF AMERICA,

v.

WILBUR ROISUM,

Defendant.

VERDICT

We, the jury, duly impaneled and sworn to try the above-entitled cause, do find the defendant,

Wilbur Roisum, guilty, as charged in the indictment, herein.

Dated at Portland, Oregon, this 17 day of October, 1944.

/s/ GORDON L. WILTSHIRE

Foreman

[Endorsed]: Filed Oct. 17, 1944. [3]

District Court of the United States

No. 16542

Criminal Indictment in one count for violation of U.S.C., Title 50, Section 311, App., U.S.C.A., and Section 692.17 Paragraph (c), Selective Service Regulations.

UNITED STATES

v.

WILBUR ROISUM

JUDGMENT AND COMMITMENT

On this 3rd day of November, 1944, came Mr. James H. Hazlett, Assistant United States Attorney, and the defendant Wilbur Roisum, appearing in proper person, and by Mr. Dellmore Lessard, of counsel; and

The defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to wit: knowingly, wil-

fully, unlawfully and feloniously failing and refusing to return to Civilian Public Service Camp No. 128, Lapine, Oregon and continuing to remain away from said camp without permission or authority, in violation of the Selective Training and Service Act of 1940, as amended, and the Rules and Regulations issued thereunder; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two Years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed CLAUDE MCCOLLOCH

United States District Judge.

[4]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Wilbur Roisum,
Route 2, Box 468, Vancouver, Wash.

Name and address of Appellant's Attorney: Dell-
more Lessard, 505 Corbett Bldg., Portland, Oregon.

Offense: Desertion from Civilian Public Service
Camp.

Date of Judgment: November 3, 1944.

Brief Description of Judgment or Sentence: Two
years in a Federal Penitentiary to be selected by
the Attorney General.

Name of Prison Where now confined if not on
bail: Multnomah County Jail, Portland, Ore.

I, Wilbur Roisum, the above named Appellant,
hereby appeal to the United States Circuit Court
of Appeals for the Ninth Circuit from the judg-
ment above-mentioned on the grounds set forth
below.

1. Denial of motion for a directed verdict of
"Not Guilty" at the conclusion of the presentation
of the Government's case;

2. Denial of motion for a directed verdict of
"Not Guilty" at the conclusion of the trial;

3. Refusal of Trial Court to give requested
instruction to the jury;

4. The giving of the Trial Court's instruction
to the Jury that they cannot consider the irregu-
larities on the part of the Selective Service Board
in their failure and refusal to grant defendant's
request for exemption from training or service, and

in withdrawing from the consideration of the jury all consideration of the claimed discrimination of the draft board against this defendant in refusing to classify him as IV-D and giving him classification IV-E against his will and without his consent;

5. Denial of the Trial Court of defendant's motion for [5] a judgment of "Not Guilty" notwithstanding the verdict of the jury, or in the alternative for a new trial.

Dated: November 3, 1944.

/s/ WILBUR ROISUM
Appellant.

Received a copy of the above Notice of Appeal this 3rd day of November, 1944.

CARL C. DONOUGH,

U. S. District Atty.

By JAMES H. HAZLETT
Assistant.

[Endorsed]: Filed Nov. 3, 1944. [6]

[Title of District Court and Cause:]

ASSIGNMENT OF ERRORS

Comes now the defendant and appellant, Wilbur Roisum, and files the following Assignment of Errors upon which he is relying on appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

I.

That the Court erred in refusing to give defendant's requested instruction to the jury.

II.

That the Court erred in withdrawing from the consideration of the jury the question of whether or not Local Selective Service Board #1, Yakima County, Sunnyside, Washington had erroneously classified defendant in class IV-e instead of IV-d, and thereby denied him his exemption from training and service as a Minister of the Gospel.

III.

That the Court erred in denying defendant's motion for a judgment of acquittal notwithstanding the verdict, and in the alternative for a new trial.

IV.

That the Court erred in finding and adjudging the defendant guilty.

V.

That the Court erred in imposing against the defendant, Wilbur Roisum, any sentence.

DELLMORE LESSARD

Attorney for the defendant.

Received a copy of above this 8th day of December, 1944.

NATHAN M. LANGLEY

Assistant U. S. District

Attorney

[Endorsed]: Filed Dec. 8, 1944. [7]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered That the above entitled case came on regularly for trial on Tuesday, October 17th, 1944 in the above entitled Court at Portland, Oregon, before the, Honorable Claude McColloch, Judge Presiding. A jury having been duly empaneled and sworn as by law provided. The United States of America appeared by Mr. James H. Hazlett, Assistant United States District Attorney. Defendant appeared in person and by his attorney, Mr. Dellmore Lessard.

The appealing defendant respectfully submits the following Bill of Exceptions:

EXCEPTION No. 1

The plaintiff and defendant having concluded and submitted their evidence, the defendant thereupon requested the judge to give the following instruction to the jury:

"The Court hereby instructs you that if you find that Local Board #1, Yakima County, Sunnyside, Wash. erroneously classified defendant in Class IV-E, that their order issued to the defendant to report to the C. P. S. Camp was void and your verdict should be "Not Guilty".

But the Court refused to give such charge, to which refusal the defendant excepted.

EXCEPTION No. 2

The Court thereupon gave the following instructions to the jury:

"The only questions for your consideration, Ladies and Gentlemen, are as in similar cases where you have sat, whether the material [8] allegations of the indictment have been proven beyond a reasonable doubt. Those are that this defendant was classified in Class IV-E under the Draft Law and he was assigned to Civilian Public Service Camp at Lapine, Oregon, and that he left that camp on May 27 with permission to leave one day but that he remained away continuously thereafter, knowingly and willfully, and knowingly and willfully failed and refused to return.

"There has been testimony in support of all of those things. There has been no testimony to the contrary.

"If you find all of those things to be true beyond a reasonable doubt, the Government having the burden of proof in this as in all criminal cases—and a reasonable doubt means such doubt as would cause an average reasonable person to hesitate in making an important decision in his own affairs—if you find those things to be true beyond a reasonable doubt, it is your duty to return a verdict of guilty. If you are not satisfied with the proof of all of those things beyond a reasonable doubt, it is equally your duty to return a verdict of not guilty.

"This case presents, like other cases that you have sat on, the difference of opinion between the registrant and his Draft Board as to his classification, but I instruct you, as I have in other cases, Ladies and Gentlemen, that under the circumstances

of this case the action of the Draft Board in classifying him IV-E is conclusive for the purposes of this case, and while certain other matters have been allowed to be gone into, they really have no bearing on the question involved, which is the truth or falsity of the material allegations of the indictment as I have stated them to you.

"You will take the exhibits with you to the jury room and give them the weight you believe they are entitled to, along with the evidence you have heard in the case.

"Your verdict must be unanimous. It will be signed by your foreman whom you will elect upon your retirement, and returned into court."

To the giving of said charge the defendant excepted specifically to that portion of the charge in which the court withdrew from the consideration of the jury the consideration of whether or not the Local Selective [9] Board had erroneously classified him in Class IV-E instead of IV-D and thereby denied him his lawful exemption as a minister of the Gospel.

EXCEPTION No. 3

The said cause having been submitted to the jury by the Court under its charges, and the jury having rendered a verdict against the defendant, on October 17th, 1944, at the term of Court aforesaid, the defendant made and submitted to the said Court his motion for a judgment notwithstanding the verdict of the jury, and in the alternative for a new trial, on the ground of error committed by the trial judge

at the time of trial in that the trial judge refused to give the charge submitted by the defendant, and in that the trial judge in his charge to the jury withdrew from their consideration the question of whether or not the local selective service board which had jurisdiction of the defendant had been guilty of arbitrary, capricious and unlawful conduct in giving the defendant a classification of IV-E and continuing him in said classification after he had informed them that he did not claim to be a conscientious objector, and in refusing him a classification of IV-D and thereby exempt him from all training and service under the Selective Service and Training Act.

On November 3rd, 1944 the said motion came on to be heard, and upon consideration of said motion the court on the same day denied the same, to which ruling the defendant excepted.

In connection herewith there is hereto attached a full transcript of the testimony introduced in this cause, and the arguments of counsel, together with all exhibits certified by Alva W. Person, Reporter, and made a part of this Bill of Exceptions.

DELLMORE LESSARD

Attorney for defendant and
appellant.

United States of America,
State of Oregon,
County of Multnomah—ss.

It Is Hereby Certified that on the . . . day of
November, 1944, the Honorable Claude McColloch,

Judge of the above entitled Court, for good cause shown entered an Order allowing defendant, Wilbur Roisum, to have to and including the 20th day of December, 1944, for settlement and filing of Bill of [10] Exceptions and Assignment of Errors, in respect to the within appeal.

It further appearing that there is attached hereto a full transcript of the testimony together with all exhibits offered in the above entitled case and made a part of this Bill of Exceptions.

It Is Further Certified That the foregoing Exceptions asked and taken by the defendant, Wilbur Roisum, were duly presented within the time fixed by law and the Order of this Court, and the Bill of Exceptions is by me allowed and signed this 8th day of December, 1944.

CLAUDE McCOLLOUGH

Judge of the District Court of the United States
for the District of Oregon.

State of Oregon,

County of Multnomah—ss.

Due service of the within Bill of Exceptions is hereby accepted in Multnomah County, Oregon this 8th day of December, 1944, by receiving a copy thereof, duly certified to as such by Dellmore Lessard, attorney for defendant and appellant.

NATHAN M. LANGLEY

Asst. U. S. District Atty.

[Endorsed]; Filed Dec. 8, 1944. [11]

[Title of District Court and Cause.]

On motion of counsel for the defendant in the above entitled cause, and for good cause shown,

It Is Ordered That the time for settling and filing the Assignment of Errors and Bill of Exceptions, and also the filing of the transcript on appeal of this cause, be and the same is hereby extended to and including Dec. 20, 1944.

Dated this 28 day of November, 1944.

CLAUDE McCOLLOCH

Judge.

[Endorsed]: Filed Nov. 28, 1944. [12]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

This matter coming on regularly for hearing upon motion of Dellmore Lessard, attorney for the defendant, and good cause appearing;

It Is Ordered that the time for the filing of the transcript of the record herein with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended to and including the 29th day of December, 1944.

Dated at Portland, Oregon this 19 day of December, 1944.

[Sgd] CLAUDE McCOLLOCH

Judge.

[Endorsed]: Filed Dec. 19, 1944, [13]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant hereby adopts as his points on appeal the assignments of error heretofore placed on file herein.

Dated at Portland, Oregon this 18th day of December, 1944.

/s/ **DELLMORE LESSARD**

Attorney for defendant and
appellant

Received a copy of above this 19th day of December, 1944.

/s/ **J. MASON DILLARD**

Asst. U. S. District Attorney

[Endorsed]: Filed Dec. 19, 1944. [14]

[Title of District Court and Cause.]

**ORDER TRANSMITTING ORIGINAL
EXHIBITS**

This matter coming on regularly for hearing upon motion of Dellmore Lessard, attorney for the defendant, and good cause appearing;

It Is Ordered that the Clerk of this Court be, and he is hereby directed to transmit all of the exhibits in this suit in their original form to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, at Portland, Oregon this 26th day of December, 1944.

CLAUDE McCOLLOCH

Judge,

[Endorsed]: Filed Dec. 26, 1944. [15]

[Title of District Court and Cause.]

PRAECIPE TO CLERK

You will please prepare a transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore taken herein, and include in said transcript the following pleadings, proceedings, orders and documents, to-wit:

1. Indictment
2. Record of plea of not guilty
3. All exhibits
4. Verdict of Jury
5. Judgment of Court and sentence
7. Notice of appeal
8. Assignment of Errors
9. Bill of Exceptions
10. All orders extending time
11. Statement of points upon which appellant intends to rely
12. This praecipe
13. Order to forward original exhibits
14. Transcript of proceedings.

Dated at Portland, Oregon this 18th day of December, 1944.

/s/ **DELLMORE LESSARD**

Attorney for defendant and
appellant

Received a copy of above this 19th day of December, 1944.

J. MASON DILLARD

Asst. U. S. District Atty.

A true copy

DELLMORE LESSARD

Attorney for defendant and
appellant

[Endorsed]: Filed Dec. 19, 1944. [16]

CERTIFICATE OF CLERK

United States of America
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to 17 inclusive, contain a transcript of the matters of record in said court pertinent to the appeal and as designated in the praecipe for transcript filed by the appellant in a criminal case in said court numbered C 16542, in which the United States of America is plaintiff and appellee, and Wilbur Roisum is the defendant and appellant; that I have compared the foregoing transcript with

the original thereof and that the same is a full, true and correct transcript of the said record and proceedings had in said court in said cause in accordance with the rules and praecipe for transcript filed in said cause by the said appellant.

I have annexed to and am transmitting with the said transcript the original assignment of errors and the original bill of exceptions filed in said cause by the said appellant.

I am enclosing with this record, the original exhibits introduced at the time of trial numbered 1 to 5 inclusive, also transcript of trial proceedings.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 27th day of December, 1944.

[Seal]

LOWELL MUNDORFF,

Clerk.

By F. L. BUCK

Chief Deputy. [17]

[Title of District Court and Cause.]

PROCEEDINGS

Portland, Oregon, Tuesday, October 17, 1944.

2:07 o'clock P. M.

Before: Honorable Claude McColloch, Judge, and
a jury.

Appearances:

Mr. James H. Hazlett, Assistant United States Attorney, in behalf of the United States of America.

Mr. Dellmore Lessard, Attorney for the Defendant.

Mr. Wilbur Roisum, the defendant, was present.

The Court: United States against Roisum. Call the jury.

(A jury was here impaneled and sworn.)

The Court: Mr. Hazlett.

Mr. Hazlett: If it please the Court, Ladies and Gentlemen of the jury: The issue in this case is a very narrow issue. The defendant registered at Yakima, Board No. 1, which is [1*] located at Sunnyside, Washington. He was classified by the Board as a conscientious objector in the classification of IV-E, and he was assigned to Camp 128, which is located at Lapine, Oregon. He went to the camp

*Page numbering appearing at top of page of original Reporter's Transcript.

and after remaining there some time he went away on a furlough and did not return.

Mr. Lessard: May it please the Court, Ladies and Gentlemen: You have listened to one other case today and perhaps you are wondering why we are having these trials. The reason that we are having these trials is that these defendants, who are Jehovah's Witnesses, are accused of failing to obey an order of the Draft Board. They come into court and they feel they are entitled to tell their story. They want you to know just what their belief is and the things they stand for, and that they are here, not as draft evaders but as believers in a certain belief, which to them is precious enough for them to come into court and tell you about it. So in this instance the defendant was classified by the records of the Sunnyside Board in classification IV-E and ordered to report to a conscientious objector's camp. The defendant did report to the camp and the evidence will show you that he did not remain at the camp because he claimed that the Draft Board erroneously classified him in IV-E instead of IV-D, and that he did not feel that the Draft Board had a right, or the camp had a right, either one, to compel him to remain, and so he left.

Mr. Hazlett: Miss Christopherson. [2]

The Clerk: Will you state your name, please.

Mrs. Christopherson: Mrs. Avis Christopherson.

MRS. AVIS CHRISTOPHERSON

was thereupon produced as a witness in behalf of the United States of America and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hazlett:

Q. You are the Chief Clerk of Local Board No. 1 in Yakima County, Washington?

A. Yes, sir.

Q. Have you the file with you of the defendant in this case, Wilbur Roisum? A. Yes, sir.

Q. Will you turn to that file and produce the questionnaire which was sent to your Board.

(Witness produces document.)

Mr. Hazlett: We ask that to be marked Government's Exhibit 1 for identification and will ask to have it introduced in evidence.

(The document was thereupon marked Government's Exhibit 1 for identification, was passed to Mr. Lessard for examination.)

Mr. Lessard: No objection.

The Court: Admitted. [3]

(The Selective Service Questionnaire of Wilbur Roisum, so offered and received, having been previously marked for identification, was marked received as Government's Exhibit 1.)

Mr. Hazlett: Q. Respecting Government's Exhibit No. 1, will you state the date of the birth of the defendant as stated by him in his questionnaire.

A. September 18th, 1919.

(Testimony of Mrs. Avis Christopherson.)

Q. What classification was given the defendant by the Board?

A. Mr. Roisum was classified in Class I ~~VO~~ by the Board on June 25th, 1942.

Q. Now did he appeal from that classification?

A. Yes, sir.

Q. And was an appeal taken?

A. Yes, sir. He appealed on June 30th, 1942.

Q. And what classification did the Appeal Board give him?

A. The Board of Appeals placed Mr. Roisum in Class IV-E on August 4th, 1943.

Q. Have you the vote of the Appeal Board there?

A. Yes, sir; on the back of the questionnaire.

Q. What was the vote of the Appeal Board?

A. The vote of the Appeal Board was four to none.

Q. What was it?

A. It was a unanimous vote, four to nothing. [4]

Q. Placing him in IV-E? A. Yes, sir.

Q. Now subsequent to the classification by the Appeal Board of the defendant in IV-E, did your Board receive an assignment from the Director of Selective Service for this defendant?

A. Yes, sir, we did.

Q. Will you produce that.

(The witness here produced document.)

Mr. Hazlett: And we will have that marked as Government's Exhibit No. 2 for identification, which we will introduce in evidence.

(Testimony of Mrs. Avis Christopherson.)

(The document so offered was marked Government's Exhibit 2 for identification.)

Mr. Lessard: Nothing.

The Court: Admitted.

(The Assignment to Work of National Importance dated January 15, 1944, signed Lewis B. Hershey, Director, concerning Registrant Wilbur Roisum, so offered and received, having been previously marked for identification, was marked received as Government's Exhibit 2.)

Mr. Hazlett: Q. To what camp was the defendant assigned by the Director of Selective Service?

A. He was assigned to Civilian Public Service Camp No. 128 at [5] Lapine, Oregon.

Q. Now pursuant to that assignment by the Director of Selective Service, did your Board send him an order to report for entrainment?

A. I beg your pardon?

Q. Pursuant to the receipt of that assignment did your Board order the defendant to report for entrainment to Camp No. 128 at Lapine, Oregon?

A. Yes, sir, we did.

Q. And when was that?

A. We mailed the order to Mr. Roisum on January 28th, 1944, ordering him to report at the Planters Hotel at Sunnyside, Washington, on the 7th of February, to proceed—

Q. Now pursuant to that request did he report?

A. No, sir, he didn't.

(Testimony of Mrs. Avis Christopherson.)

Q. Now subsequent to that did you send him another order to report?

A. Yes, sir. We mailed him a second order to report, or, rather, we delivered it to him; I delivered it in person on April 27th, 1944.

Q. Was he to report then?

A. Yes. He was to report on April 28th, on the morning of April 28th, 1944.

Q. Now did he report then?

A. Yes, sir, he reported. That is, he left Sunnyside. [6]

Q. He left Sunnyside?

A. But he didn't reach the camp.

Q. He didn't get to the camp? A. No.

Q. Subsequent to that did you send him another order to report?

A. Yes, sir. On May 18, 1944, we mailed him a third order, instructing him to report on the 23rd of May, 1944.

Q. Now will you just tell of the circumstance of sending that last request. A. Yes, sir.

Q. What was that pursuant to?

A. After the first order to report was mailed and he failed to report, we reported him to the Federal Bureau of Investigation and he was tried at Yakima, Washington, and the trial was stopped and the Judge gave him another chance to go to camp and he accepted it.

Q. That was Judge Schwellenbach?

A. Yes, sir.

(Testimony of Mrs. Avis Christopherson.)

Mr. Hazlett: We will ask that all of those orders be introduced as one exhibit and marked Government's Exhibit No. 3 for identification and ask to have them introduced.

(The three orders to report for work of national importance so offered were marked Government's Exhibit 3 for identification, and passed to Mr. Lessard.) [7]

Mr. Hazlett: We introduce those.

The Court: Admitted.

(The three orders to report for work of national importance dated January 28, 1944, April 27, 1944, and May 18, 1944, directed to Wilbur Roisum, so received in evidence, having been previously marked for identification, were further marked received as Government's Exhibit 3.)

Mr. Hazlett: Q. After you had sent him this last order to report for entrainment to camp, did he report for entrainment to your Board?

A. Yes, sir; in compliance with the order mailed on May 18th.

Q. And you furnished him transportation and everything? A. Yes, sir.

Mr. Hazlett: You may inquire.

The Court: I wonder if you have got the exhibits in that you want. The Clerk thought there might be a little mix-up here.

(Testimony of Mrs. Avis Christopherson.)

Mr. Hazlett: I want the three orders from the Board.

(The Clerk here passed paper to Mr. Hazlett.)

Mr. Hazlett: Yes, that is one of them.

The Court: Let Mr. Lessard see it.

Mr. Lessard: I have seen that order but, if the Court please, may we have the whole file as an exhibit, and may I examine the file before we proceed?

[8]

The Court: Mark the file.

(The file of Local Board 1, Yakima County, Sunnyside, Washington, in re Wilbur Roisum, was thereupon marked Court's Exhibit 4.)

(Proceedings in this trial were suspended at 2:33 o'clock p.m. until 2:38 o'clock p.m., when the following further occurred herein:)

The Court: Now you may proceed. Proceed with this trial.

Mr. Hazlett: I would like to ask one question I fear I forgot to ask.

The Court: Yes.

Mr. Hazlett: Q. Referring to Government's Exhibit No. 1, will you look at that and state the date of the birth of the defendant. I may have asked it but I want to ask it to be sure.

The Court: Yes, you did. The date of birth was September 18, 1919.

Mr. Hazlett: I withdraw the question. You may inquire, Mr. Lessard.

(Testimony of Mrs. Avis Christopherson.)

Cross Examination

By Mr. Lessard:

Q. Mrs. Christopherson, referring to Government's Exhibit No. 1, which is the defendant's questionnaire—

The Court: Her name is Christopherson, isn't it?

The Witness: Yes.

Mr. Lessard: Christopherson. I beg your pardon.

Q. In that questionnaire did the defendant claim to be a con- [9] scientious objector?

A. The defendant checked question of Series X 1—

The Court: Will you speak up?

The Witness: Yes, sir. He checked Series X 1, which states, "By reason of religious training and belief I am conscientiously opposed to participation in war in any form and therefore claim exemption from combatant training and service."

Q. He also claimed to be a minister of the gospel, did he not? A. Yes, sir.

Q. Later on did the registrant fill out a conscientious objector form? A. Yes, he did.

Q. May we have that?

The Witness: May I have the file, please?

(Court's Exhibit 4 was here passed to the witness.)

Q. For the time being just lay it down. Now later on you received a letter from the defendant

(Testimony of Mrs. Avis Christopherson.)

dated February 3rd, 1944, in which he told the Board that he did not claim—did not wish to be classed as a conscientious objector, did you not?

A. That letter was addressed to the State Director of Selective Service and we received a copy of it on February 7th.

Q. And in that letter defendant waived all claims as a conscientious objector?

A. At that time the defendant—we received this letter on the [10] day that the defendant was supposed to report for camp assignment.

Q. You received another letter dated October 10th, 1944, did you not, which was prior to the time he was supposed to report?

A. October 10th, 1944?

Q. Yes.

A. We just received that the other day.

Q. Oh, yes. I was thinking of 1943. May I have the letter of February 3rd?

(The witness passed paper to Mr. Lessard.)

Mr. Lessard: May it please the Court, I desire to have this letter read to the jury, and I presume the Court wants me to read it instead of having the witness read it.

Mr. Hazlett: If I understand—I may be mistaken—this letter was received after the order had been sent to the defendant to report, and having been received since or subsequent to his order to report for entrainment it would have nothing whatever to do with this case.

The Court: I will so instruct the jury but he may read it, since the file is in the case anyhow.

(Testimony of Mrs. Avis Christopherson.)

Mr. Lessard: "Local Board No. 1, Yakima County, Sunnyside, Washington.

"My name, Wilbur Roisum, Outlook, Washington, Order No. 4590. Local Board No. 1, Yakima County, Sunnyside, Washington. I registered October 16th, 1940. My questionnaire was [11] filed in fall of 1941. First Class was I-A-O from local board in June 26, 1942. Class of appeal board was I-A-O. I received that October 1, 1942. On October 5th, 1942, I received a notice of induction into the Army. Two days later I received a I-A class. I notified them of my intention on their induction notice. Then the local board appealed my case. Then I went before a government hearing officer in Spokane May, 1943. The first part of December, 1943, I received a 4-E classification. I tried to appeal that classification but my local board said I could not do so, then I received a notice to report to a C.O. camp in Lapine, Oregon, the 7th of February, 1943.

"Dear Sir:

"This letter is a notice of my request for a appeal to the President for a 4-D classification. A few days ago I received a 4-E classification from a appeal board in Spokane. This classification is clearly out of my proper class, and therefore I am unable to accept it. I would be forced to accept the penalty it would bring about if I were forced to keep that classification.

"Ever since the beginning of my registering

(Testimony of Mrs. Avis Christopherson.)

under the laws of the Selective Service, I have asked for a 4-D classification. I had served as a minister of the gospel for many months before the enactment of the Selective Service Law and have been a student of the divine word for over ten years. I have been a pioneer under the Watchtower Bible and Tract Society for two [12] different periods since 1940. Also served with the Sunnyside, Kennewick, and Prosser County of Jehovah's witnesses in the state of Washington, and with the Dalles County in Oregon.

"I was a pioneer till recently when I had to resign to go under a operation, and diet, treatment for a stomach ailment that I have had for over 20 years.

"I believe that under the laws of this country I have a right to a 4-D classification, and my activity which are disclosed in my file at my local board if given a fair consideration should establish that fact.

"Sincerely yours,

WILBUR ROISUM.

"P. S. I request that my case be reviewed and that this last induction notice be postponed. Also that you carry this to the President.

"When I received my questionnaire I filled it out promptly, and filed with it affidavits, papers, etc., to establish my rightfulness to a 4-D classification. Then the local board sent me a I-AO classification.

"I appeared before the local board personally to ask them for my proper classification after receiving a I-AO classification, and if I could not get it

(Testimony of Mrs. Avis Christopherson.)

I wanted to appeal. The chairman went into a fit of rage against Jehovah's witnesses, and I tried to explain my qualification as a minister of the gospel, in a friendly way, and he became more angry and left the office, then another member of board handed me the proper [13] paper to sign for my appeal.

"Some months later I heard from the appeal board they left me in I-AO. The report says the F.B.I. investigated my case. However, I know of some they asked information of me, that did not even know I existed.

"Then I received a notice of induction into the Army, following two days later by a I-A classification. I notified them again of my position and then they appealed my case. Some months later I got a notice I could go before a government hearing office in Spokane. I went. He told me he could make no statement in my behalf before the appeal board concerning my right for a 4-D classification, but only on a 4-E classification. That being the case the appeal would be worthless as far as I was concerned. And I should the right of another appeal just on that. He couldn't even say anything about my right of a 4-D classification to the appeal board.

"When I received my notice of a 4-E classification I went up to the local board and asked them for another appeal, but they said I could not get another appeal. But after that—but after received more information on it the law shows I have a right of another appeal. That is the reason I am late with

(Testimony of Mrs. Avis Christopherson.)

this appeal. A 4-E does not fit me any more than a I-A classification."

Q. Do your records show as to whether or not this defendant was permitted to appeal from the conscientious objector classifica- [14] tion of IV-E?

A. The regulations state that if the decision of the Appeal Board is by unanimous vote, that he cannot appeal to the President, unless the State Director deems it in the interest of justice.

Q. Which classification did the Local Board place him in before he was placed in IV-E?

A. The Local Board placed him in I-AO and he did appeal that.

Q. And the Appeal Board placed him in IV-E?

A. Yes, sir.

Q. But he didn't ask for the IV-E?

A. Well, he was classified according to the information in his cover sheet.

Mr. Jessard: That is all.

Redirect Examination

By Mr. Hazlett:

Q. Just one question. You have stated the vote was unanimous of the Appeal Board?

A. Yes, sir.

Mr. Hazlett: That is all.

(Witness excused.)

Mr. Hazlett: Mr. Murch.

The Clerk: Will you state your name, please.

Mr. Murch: Herbert L. Murch. [15]

HERBERT L. MURCH

was thereupon produced as a witness in behalf of the United States of America and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hazlett:

Q. Are you Camp Director of Camp No. 128 at Lapine, Oregon? A. Yes.

Q. And were you the Camp Director when Wilbur Roisum came to the camp? A. Yes, sir.

Q. Will you state when he came to the camp.

A. I have the date here on the receiving form. He reported at camp on the 23rd day of May, 1944.

Q. Is that a copy of the notice to report?

A. Yes, sir.

Mr. Hazlett: We offer that in evidence, if the Court please—ask that it be marked and offer it in evidence.

(The document so offered was marked Government's Exhibit 5 for identification and passed to Mr. Lessard.)

The Court: Admitted.

(The Order to Report for Work of National Importance dated April 27, 1944, so offered and received, having been previously marked for identification, was marked re- [16] ceived as Government's Exhibit 5.)

Mr. Hazlett: When did he report to the camp? What was the date? A. May 23, 1944.

Q. How long did he remain at the camp?

(Testimony of Herbert L. Murch.)

A. Well, his work record shows that he arrived on May 23rd and was on the project the 24th, 25th, 26th and 27th. On Sunday, May 28, or Saturday, May 27th, he asked for a week-end leave, which was granted. He went to Bend and never returned. He was at camp, arriving on the 23rd. Counting the day he arrived, on the 23rd, he was there five days.

The Court: What does week-end leave mean?

A. They are granted, upon request to leave camp Saturday evening after five p.m., after the end of the work day, and be at liberty until midnight Sunday night, but he didn't return to the camp.

Mr. Hazlett: Q. And he has never returned to camp?

A. No, he has not.

Mr. Hazlett: You may inquire.

Mr. Lessard: No questions.

(Witness excused.)

Mr. Hazlett: The Government rests.

DEFENDANT'S EVIDENCE

Mr. Lessard: Call defendant, Mr. Roisum: [17]

The Clerk: Will you state your name, please.

Mr. Roisum: Wilbur Roisum.

WILBUR ROISUM,

the defendant, was thereupon produced as a witness in his own behalf and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lessard:

Q. Where do you reside, Mr. Roisum?

A. Vancouver, Washington.

Q. How long have you resided there?

A. Since last July.

Q. And who do you reside with over there?

A. With my parents.

Q. And you are married, aren't you?

A. Yes, I am.

Q. Your wife live with you, too?

A. Yes, she does.

Q. Now where did you reside before you lived at Vancouver?

A. I lived at Camas a short time, about a month and a half, I believe. Before that I resided in Yakima Valley.

Q. And is that where you registered for the Selective Service, in Yakima?

A. Sunnyside, Washington, in Yakima Valley.

Q. Now at the time you received—referring to

(Testimony of Wilbur Roisum.)

the questionnaire which has been introduced, did you state your occupation? [18]

A. Yes, I did.

Q. And what occupation did you state?

A. Minister of the gospel.

Q. Did you state any other occupation?

A. Not in particular, no.

Q. As to the conscientious objector, did you state whether or not you were a conscientious objector?

A. I always asked for IV-D and tried to bring it out to the Board that I was not taking a position of a conscientious objector.

Mr. Lessard: Can the last juror hear him? You will talk louder, Mr. Roisum.

Mr. Hazlett: That answer was not responsive to counsel's question.

Mr. Lessard: Well, the jury didn't hear it anyhow, so we will ask it over.

Q. Did you ask for a conscientious objector classification, or not? A. No, I never.

Q. What classification did you request the Board to give you? A. Classification IV-D.

Q. And why did you ask for that classification?

A. Because I had worked as a minister ever since the spring of 1939 and had studied years previous to that.

Q. How old are you?

A. I am twenty-five years old. [19]

Q. Now, how long? You say you have studied years previously to that; how many years?

A. Ever since 1930.

(Testimony of Wilbur Roisum.)

Q. And in what religious sect or organization did you study?

A. I am one of Jehovah's Witnesses and we receive our instructions in this Gospel of the Kingdom from the Watchtower Bible and Tract Society in Brooklyn, New York.

Q. The Board then gave you classification I-AO?

A. Yes. That was the first classification I received from the Board.

Q. Then what happened? What did you do?

A. I appealed that classification. I went before the Board personally and asked to appeal for a IV-D classification.

Q. And were you informed of what the Appeal Board determined on that appeal?

A. I was, but before that I received a notice to report for induction into the armed forces and right after that—

Q. That is while your appeal was pending?

A. Uh huh; and then right after that I received a I-A classification from the Local Board.

Q. Was that I-A classification subsequently changed?

A. Well, later—well, they sent me a delinquent notice of induction into the Army and sometime after that I received a I-AO classification again from the Appeal Board, confirmed by the Appeal Board. [20]

Q. Then what did you do?

A. Then I, as a matter of fact, told them that I could not accept it, I believe, but I never took

(Testimony of Wilbur Roisum.)

no action upon it because I didn't know of my rights of appeal.

Q. Well, did you take any action? A. No.

Q. What happened after that?

A. Well, as far as I can understand, the Board must have took some sort of action on account of my refusal to report.

Q. Were you sent any other classification after that?

A. Then I received the IV-E classification.

Q. Then what did you do?

A. Well, I went before the Board and requested—well, they asked me to come, so I went before them and I asked—they wanted information on my rights of appeal. They said I went as far as I could. But I received a pamphlet from Washington, D.C., on laws respecting that, and it seemed to indicate in that pamphlet that I had a right of appeal, so I took advantage of it. That appeal was read to the jury today.

Q. What is your classification at the present time? A. IV-E.

Q. And do you have your classification card with you which shows whether it was issued by the Local Board or the Appeal Board?

A. I can look at it. It says Board of Appeals by vote of five to nothing, IV-E. [21]

Q. Had you ever asked for that classification?

A. No, I hadn't. I have requested many times that I be not given that classification.

(Testimony of Wilbur Roisum.)

Q. Well, subsequently you were ordered to report to the camp at Lapine, Oregon?

A. Well, after my IV-E classification, the one I just showed, I refused to go and I was arrested by the United States Marshal at Yakima—Sunnyside, Washington—I don't remember; it was last spring. I don't know the exact date.

Q. And you were arrested by the Marshal?

A. Uh huh.

Q. Were you placed in custody?

A. Yes, I was.

Q. And then what happened?

A. I was released on bond until my trial.

Q. And what happened at the trial?

A. Well, I handled my own case and Judge Schwollenbach said in view of the fact of the irregularities in my classifications and the conduct of the Local Board he offered me an opportunity to appear down at the—report down at the C.O. Camp at Lapine and raise the issue there through a habeas corpus. He says as far as he was concerned he could listen to what I had to say but he had no authority to act on it, his hands were tied.

Q. Then you did report subsequently down to Lapine? A. Yes, I did. [22]

Q. And did you, or did you not, stay?

A. At the first I had two notices to report. The first one they only gave me transportation to Bend, Oregon. I never knew where Lapine was and I inquired and they said it was fifty miles out

(Testimony of Wilbur Roisum.)

in the woods. I didn't wish to walk, so I went back home.

Q. Then what happened?

A. They just sent me another notice to report.

Q. Those were, as far as you know, the two notices Miss Christopherson told about this morning?

A. Yes.

Q. Did you report the second time?

A. Yes, I did.

Q. What did you do after you reported?

A. I was there about three days, I believe, and as the understanding was I was only there for a habeas corpus and my understanding was quite far from the true facts of securing a habeas corpus and I knew it would not work in my case because it was voluntary confinement on my part, which I can't do, for my business is to preach this Gospel of the Kingdom and not to accept voluntary servitude.

Q. Is staying there in conflict, then, with your religious views?

A. Most certainly, for I only went there for a habeas corpus.

Q. Will you tell the jury how it conflicted with your views?

A. Well, as I said, my occupation is preaching this Gospel of the Kingdom, not knocking limbs off of trees out in the middle [23] of the mountains. Christ Almighty gave me this opportunity to publish this Gospel of the Kingdom and I would not throw it away like that.

(Testimony of Wilbur Roisum.)

Q. Do you think of anything else the jury ought to know about this matter pending against you?

A. Well, I was waiting for the information of a habeas corpus, and for one thing the expense was far above what I could afford; I found that out; and, therefore, I left the camp. However, at the camp I never took no oath that I was to remain there. None was asked of me. I gave no indication I was staying there except for my habeas corpus, and when that did not come through I had no more reason to be there, for I was only there for three days.

Mr. Lessard: Cross examine.

Cross Examination

By Mr. Hazlett:

Q. Now Judge Schwellenbach informed you at that trial that the question of classification was no defense to an indictment, did he not?

A. What is the question again?

Q. Did not Judge Schwellenbach inform you there at that trial that your claim of being improperly classified was no defense to an indictment?

A. No defense to the indictment?

Q. Yes. [24] A. I could not say.

Q. Did not he inform you that the only way you could raise the question of the classification was to submit to your Board and then sue out a writ of habeas corpus?

A. He said the only way I could do it was through reporting to this C.P.S. camp.

Q. And wasn't that case dismissed?

(Testimony of Wilbur Roisum.)

A. Yes.

Q. On your promise that you would report to the camp and sue out a writ of habeas corpus?

A. On condition that I report to the camp and, if I wished, secure my habeas corpus.

Q. Why did you not sue out a writ of habeas corpus, as Judge Schwellenbach advised you?

A. As I stated here, the expense was far above my means.

Q. You knew, then, when you deserted, that you had no defense, such as Judge Schwellenbach had mentioned to you?

A. Will you ask that again, please?

Q. When you deserted, then, you knew you could not raise the defense which he suggested you could raise by a writ of habeas corpus, did you not?

A. If they are able to raise it outside the camp or not I don't know.

Mr. Hazlett: That is all.

Mr. Lessard: That is all.

(Witness excused.) [25]

Mr. Lessard: Defendant rests.

Mr. Hazlett: No rebuttal.

The Court: Argue.

Mr. Hazlett: No argument.

Mr. Lessard: If it please the Court, I haven't any argument but I am preparing an instruction which I would like to submit to the Court. I haven't finished it yet.

(After a short pause Mr. Lessard passed paper to Mr. Hazlett.)

Mr. Hazlett: I object to the giving of that, because the Draft Board is the sole judge of classification.

(The paper referred to was here passed to the Court.)

Mr. Lessard: I have made the record also show, if the Court please, that this defendant raises the same objection that was raised by the previous defendant, that the Draft Board classified him wrongly, without his requesting the classification.

The Court: The only questions for your consideration, Ladies and Gentlemen, are, as in similar cases where you have sat, whether the material allegations of the indictment have been proven beyond a reasonable doubt. Those are that this defendant was classified in Class IV-E under the Draft Law and he was assigned to Civilian Public Service Camp at Lapine, Oregon, and that he left that camp on May 27 with permission to leave for one day but that he remained away continuously thereafter, [26] knowingly and willfully, and knowingly and willfully failed and refused to return.

There has been testimony in support of all of those things. There has been no testimony to the contrary.

If you find all of those things to be true beyond a reasonable doubt, the Government having the burden of proof in this as in all criminal cases—and a reasonable doubt means such doubt as would cause an average reasonable person to hesitate in making an important decision in his own affairs—if you find those things to be true beyond a reason-

able doubt, it is your duty to return a verdict of guilty. If you are not satisfied with the proof of all of those things beyond a reasonable doubt, it is equally your duty to return a verdict of not guilty.

This case presents, like other cases that you have sat on, the difference of opinion between the registrant and his Draft Board as to his classification, but I instruct you, as I have in other cases, Ladies and Gentlemen, that under the circumstances of this case the action of the Draft Board in classifying him IV-E is conclusive for the purposes of this case, and while certain other matters have been allowed to be gone into, they really have no bearing on the question involved, which is the truth or the falsity of the material allegations of the indictment as I have stated them to you.

You will take the exhibits with you to the jury room and give them the weight you believe they are entitled to, along [27] with the evidence you have heard in the case.

Your verdict must be unanimous. It will be signed by your foreman whom you will elect upon retirement, and returned into court.

Now do you want to state some exceptions, Mr. Lessard?

Mr. Lessard: Of course the defendant desires to except to the Court's refusal to give the requested instruction. Also to the Court's instruction that the jury is not to consider the matter of the Draft Board's erroneous classification of the defendant.

We feel we are entitled, under the *Billings v. Truesdell* decision, to have that go to the jury.

I might call the Court's attention to—does the Court care to have me read this paragraph?

The Court: All right.

Mr. Lessard: I would like to read this to the Court. This is a recent case that has come out since the *Falbo* case. Reading from page 558:

“Moreover, it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies.” In this instance Roisum did report at the camp. “Unless he follows that procedure he may not challenge the legality of his classification in the courts”, inferring if he follows that procedure he may challenge the legality of the classification. “But we can hardly say that he must report to the military in [28] order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the Board's order to report.”

So the defendant contends because he did follow the administrative process the jury has a right to consider whether or not the board erred in his classification and discriminated against him, by authority of the case of *Billings v. Truesdell*, decided by the Supreme Court March 27, 1944.

Mr. Hazlett: That does not hold any such thing, if the Court please. In that case he reported there. He wasn't inducted. They said he should be inducted. Now in this case he did report to the camp; he deserted. He should have exercised the right. That is the holding in that case and every other case. He must exercise the right after he gets there—not desert.

Mr. Lessard: I might tell the Court that inasmuch as the defendant was never inducted he, therefore, could not be guilty of desertion, if we are going to accept Mr. Hazlett's reasoning.

Mr. Hazlett: He went to the camp.

Mr. Lessard: But the Supreme Court does not say habeas corpus is the exclusive remedy. It says unless he does follow the procedure he may not challenge the classification. It does not [29] say how he may challenge it, so we are contending that——

Mr. Hazlett: He has not followed the procedure because he went there and deserted.

The Court: Well, that is all, Gentlemen. Well, the case will be submitted as I have instructed. Swear the bailiffs.

(Two officers were here sworn to take charge of the jury.)

The Court: Take the indictment with you to the jury room, as in other cases. It is not to be considered by you as evidence—merely a statement of the Government's charges against the defendant. I will receive your verdict at any time.

(At this point the jury retired in charge of the officers at 3:14 o'clock P.M. and at 3:48 o'clock P.M. the jury returned into court and the following occurred:)

The Court: Have you arrived at a verdict?

Foreman Wiltshire: Yes, your Honor.

(The verdict was passed to the Court.)

The Court: Mr. Wiltshire has signed the verdict for the jury as foreman. Clerk, read it.

(The Clerk read the verdict as follows:)

"In the District Court of the United States for the District of Oregon.

C-16542.

"UNITED STATES OF AMERICA,

v. [30]

WILBUR ROISUM,

Defendant.

VERDICT

"We, the jury, duly empaneled and sworn to try the above-entitled cause, do find the defendant, Wilbur Roisum, guilty as charged in the indictment herein.

"Dated at Portland, Oregon, this 17th day of October, 1944."

Signed, "GORDON L. WILTSHIRE,
Foreman."

The Court: Is this your verdict?

Jurors: Yes.

-The Court: Thank you for your consideration of the case and you are now discharged. Please return tomorrow morning at ten o'clock. The audience will remain seated while the jury leaves the courtroom. Just a minute before you leave the box. You perhaps want to make a motion similar to the one you made in the other case?

Mr. Lessard: Yes, your Honor. Due to the fact that it appears in this case the defendant was classified in Classification IV-E without his request, against his will, by the Local Draft Board, the defendant moves the Court for a judgment notwithstanding the verdict and, in the alternative, for a new trial, on the same grounds that were put in the other case.

The Court: Well, I will take that under consideration and will hear argument on it the same time as in the other case.

You are now discharged from further consideration of [31] this case.

(The jury here retired from the courtroom at 4:52 o'clock P.M.)

The Court: Unless you have serious objection, this defendant's bail will be continued until I pass sentence.

Mr. Hazlett: No objection.

The Court: Tomorrow morning at ten o'clock then.

(Court was thereupon adjourned at 4:53 o'clock P.M.) [32]

The following instruction was requested in behalf of the defendant in writing:

"U.S.

vs.

WILBUR ROISUM

DEFENDANT'S REQUESTED INSTRUCTION

"Defendant requests the following instruction to be given by Court to Jury:

I.

"The Court hereby instructs you that if you find that Local Board #1, Yakima County, Sunny-side, Wash. erroneously classified defendant in Class IV-E, that their order issued to defendant to report to the C.P.S. Camp was void and your verdict should be 'not guilty'." [33]

The Court: Will you have the defendants stand, both of them.

(The two defendants here stood.)

The Court: I have gone through both the files in these cases, and of course had the questions that have been argued presented at the trial and reserved them for further consideration, which has now been given.

The motions that are before me are for judgments of acquittal notwithstanding the verdict, and, in the alternative, for a new trial.

In the Roisum case I find no ground to support the [71] defendant's motion and the action of the Court will be the same as in other cases. The defendant Roisum will be committed to the custody of the Attorney General of the United States for imprisonment for a period of two years, and for the execution of the sentence he will be remanded to the custody of the Marshal.

In the other case, the Agan case, I find no ground for the action of the Draft Board in classifying a man as a conscientious objector when he has not claimed it, and the motion will be allowed in that case, and a judgment of acquittal will be entered and the defendant discharged.

Mr. Lessard: May it please the Court, in the Roisum case, due to the fact that we feel that a substantial question has been raised, if we determine to ~~appear~~ will the Court set bond on appeal?

The Court: Well, not right now. After you and the District Attorney have consulted I will hear you on that.

Mr. Hazlett: In the Agan case, do I understand that the motion, or the order of acquittal, disposes entirely of the defendant?

The Court: That is right.

Mr. Hazlett: Wipes the indictment off?

The Court: Yes.

Mr. Hazlett: Well, that is very agreeable to the United States Attorney. [72]

(Thereupon, the foregoing hearing was concluded at 11:10 o'clock A.M.)

[Endorsed]: Filed Dec. 7, 1944. [73]

[Title of District Court and Cause:]

REPORTER'S CERTIFICATE

I, Alva W. Person, hereby certify that on Tuesday, October 17, 1944, I reported in shorthand all oral proceedings had, all evidence given and the charge of the Court, all objections made and rulings thereon and exceptions taken, upon the trial of the above entitled cause, before the Honorable Claude McColloch, Judge of said Court, and a jury duly impaneled and sworn, and thereafter had prepared under my direct supervision a typewritten transcript from my shorthand notes, and the first thirty-three pages of the foregoing and hereto attached typewritten transcript, numbered 1 to 33, both inclusive, contain a full, true and accurate record of all of the oral proceedings had, all evidence given, objections and motions made, rulings thereon and exceptions taken upon said trial, except the examination in the impaneling of the jury.

I further certify that I reported in shorthand all of the oral proceedings had and arguments made upon the hearing [74] of the motions made in behalf of the defendants in the cases of United States of America v. Harold Ray Agan, defendant, No. C-16522, and United States of America v. Wilbur Roisum, defendant No. C-16542, which were heard together before the Honorable Claude McColloch, Judge of said Court, on Friday, November 3, 1944, and thereafter had prepared from my shorthand notes a typewritten transcript, and that portion of

the foregoing and hereto attached transcript bearing page numbers 34 to 73, both inclusive, contains a full, true and accurate record of all the arguments presented and oral proceedings had upon the hearing of said motions, and the sentences passed by the Court upon the defendants at said time.

Dated at Portland, Oregon, this 1st day of December, A.D. 1944.

ALVA W. PERSON

Court Reporter. [75]

[Endorsed]: No. 10942. United States Circuit Court of Appeals for the Ninth Circuit. Wilbur Roisum, Appellant. vs. United States of America, Appellee. Transcript of Record. Upon appeal from the District Court of the United States for the District of Oregon.

Filed December 29, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10942

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS

Appellant hereby adopts as the points upon which he intends to rely on appeal, the statement of points appearing in the transcript of the record herein, which are the same points as set forth in his Assignment of Errors, also appearing in the transcript herein.

Dated at Portland, this 5th day of January, 1945.

DELLMORE LESSARD

Attorney for appellant.

Received a copy of above this 5th day of January, 1945.

CARL C. DONAUGH

U.S. District Attorney

By **MARIE DRUMEFF**

[Endorsed]: Filed Jan. 8, 1945. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

**DESIGNATION OF PARTS OF RECORD TO
BE PRINTED IN TRANSCRIPT**

Appellant hereby designates the following parts of the record, which he thinks necessary for the consideration of this appeal, to be printed in the transcript herein, to-wit:

1. Indictment
2. Record of plea of "Not Guilty"
3. All exhibits
4. Verdict of Jury
5. Judgment of Court and sentence
6. All of transcript of testimony and trial proceedings, except page 34 to page 71, inclusive, where the following appears, "The Court: Will you have the defendants stand, both of them." And to print the remainder of said transcript beginning with said quotation by the Court, showing for the portion deleted that the Court listened to the argument of counsel for both parties hereto.
7. Notice of Appeal
8. Assignment of Errors
9. Bill of Exceptions
10. All orders extending time
11. Statement of points upon which appellant intends to rely
12. Praecipe to Clerk of District Court
13. This designation.

Dated at Portland, Oregon, this 5th day of January, 1945.

DELLMORE LESSARD

Attorney for appellant.

Received a copy of above this 5th day of January, 1945.

CARL C. DONAUGH

U.S. District Attorney

By **MARIE DRUMEFF**

[Endorsed]: Filed Jan. 8, 1945. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

**ORDER THAT EXHIBITS NEED NOT
BE PRINTED**

Good cause therefor appearing, It Is Ordered that all of the original exhibits in above cause need not be printed, but may be considered by the Court in their original form.

FRANCIS A. GARRECHT

United States Circuit Judge.

Dated: San Francisco, Calif., January 24, 1945.

[Endorsed]: Filed Jan. 24, 1945. Paul P. O'Brien,
Clerk.

No. 10942

**IN THE
United States Circuit Court of Appeals
For the Ninth Circuit**

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Upon Appeal from the District Court of the United States
for the District of Oregon**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

United States Circuit Court of Appeals for the
Ninth Circuit

Excerpt from Proceedings of Monday, September
17, 1945.

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Dellmore
Lessard, counsel for appellant, and by Mr. E. H. Cas-
terlin, Assistant United States Attorney, counsel for
appellee, and submitted to the court for consideration
and decision.

United States Circuit Court of Appeals for the
Ninth Circuit

Excerpt from Proceedings of Friday, September
27, 1947.

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

**ORDER WITHDRAWING OPINION, SETTING
ASIDE JUDGMENT AND RESUBMITTING
CAUSE**

The opinion of this Court heretofore filed on the
5th day of April, 1946, in the above entitled matter

is withdrawn. The decision entered in accord with the referred to opinion is hereby set aside. The appeal is hereby submitted to the court for opinion and decision upon the oral argument made and the briefs heretofore filed upon the appeal and upon the briefs heretofore filed on the motion for a rehearing.

United States Circuit Court of Appeals for the
Ninth Circuit

Excerpt from Proceedings of Friday, October 4,
1946.

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
JUDGMENT

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,917

WESLEY WILLIAM COX,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 10,928

THEODORE ROMAIN THOMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeals from the District Court of the United
States for the District of Idaho

No. 10,942

Oct. 4, 1946

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon

Before: Stephens, Healy and Bone,
Circuit Judges.

Stephens, Circuit Judge.

OPINION

These cases were heretofore decided; but upon petition of the United States this court set aside its decision and withdrew its opinion and ordered the cases resubmitted upon the original briefs and argument, supplemented by the briefs filed for and against the petition for rehearing.

Wesley William Cox and Theodore Romaine Thompson were indicted by a United States Grand Jury in the District of Idaho, Eastern Division, under the Selective Training and Service Act of 1940 as amended, 50 U.S.C.A. App. § 311. Wilbur Roisum was indicted by a United States Grand Jury in the District of Oregon under the same statute. Each of the inditees was tried, convicted and sentenced, and each has appealed to this court from the judgment and sentence. The three appeals are submitted to us for decision upon a consolidated brief and oral argument for appellants and upon separate briefs for appellee.

Each appellant, a registrant under § 302, was classified (§ 310) as a conscientious objector [§ 305 (g)], and was ordered to a civilian camp, there to perform such work of national importance (§ 309a)

as he should be directed to perform. After various happenings, which we need not here relate, each registrant proceeded to camp. Within fifteen or twenty minutes after arriving, Cox and Thompson left without permission and intentionally remained away. After Roisum arrived camp, he was given a limited leave of absence and intentionally remained away after his leave had expired.

All requirements to reception in camp as selectees had been met. Unlike acceptance into the armed forces, which entails a ceremony of induction, whereby the registrant ceases to be a civilian, a conscientious objector undergoes no change in his status as a civilian by becoming a selectee in a camp.

Each appellant claimed that he had obeyed the administrative orders directed to him and that he was under no lawful restraint whatever, as he saw it, since his claimed status as a duly ordained Jehovah's Witness minister of religion exempted him from any training or services under the Act and from the jurisdiction of a board to issue any order directed to him. Section 305(d) acts to exempt "regular and duly ordained ministers of religion" from training or service but not from registration.

Appellants' claims as to exemption were at all times consistently, persistently and openly made by each registrant. These claims were the subject of competent proof to the boards through the registrants' questionnaires, and evidence was presented at board hearings that, although the registrants were conscientiously opposed to war by reason of

religious training and belief, they were ministers, and requests were made for classification as such. Notwithstanding all of this, say the appellants, the boards treated their claims as ministers arbitrarily and capriciously, and proceeded to classify them as conscientious objectors.

At the trials all of the proffered evidence relevant to each registrant's claimed status as a minister was received by the courts, and as to each instance it was determined that there was substantial evidence before the boards upon which they based their classification. In each instance the court instructed the jury that they were not to consider such evidence for any purpose whatever. The evidence presented as to the showing to the boards was competent and substantial. In each case the appropriate steps were taken entitling the registrant to maintain his appeal.

It is settled that the defense in the trial under § 311 upon this phase of the case can only go to the jurisdiction of the board¹ or to the inquiry as to whether or not the board discriminated against the registrant or considered his case arbitrarily or capriciously. While the courts have the power to convict or acquit in accordance with the evidence on these issues, they have no power to try the issue of classification de novo. Since in each case under treatment in this opinion the evidence on the classi-

¹Estep v. United States (No. 292) and Smith v. United States (No. 66), U. S.; Billings v. Truesdell, 321 U. S. 542 (1944); Falbo v. United States, 320 U. S. 549 (1944).

fication issue before the board was shown to be substantially in support of the classification found by the board, the court was not in error in instructing the jury to disregard it entirely.

As stated by Mr. Justice Frankfurter in his opinion, concurring in the decision but not in the opinion of the majority of the court in *Estep v. United States* (No. 292) and *Smith v. United States* (No. 66), U. S. (1946), the controversial doctrine of jurisdiction of fact, treated in *Crowell v. Benson*, 285 U. S. 22 (1932), is suggested. That is, since ministers of religion are exempted from any service, the registrant under trial for violating § 311 may show the fact to be that he is a minister of religion and not merely that the evidence before the board was in substantial support of the board's classification. It will be recalled that it was decided in the latter case and other similar cases² that findings of fact of an administrative agency which go to the jurisdiction of the agency and which affect constitutional rights are not conclusive and may be tried by the courts de novo. Where only statutory rights are involved, as in our cases (ministers of religion have no constitutional rights to exemption from military or other service), the findings of fact are final if substan-

²See *Ng Fung Ho v. White*, 259 U. S. 276 (1922); *Borax, Ltd. v. Los Angeles*, 296 U. S. 10 (1935); *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38 (1936).

tially supported by evidence before the agency. See
So. Chicago Co. v. Bassett, 309 U. S. 251 (1940).³

Finding no error in any one of the three cases
treated in this opinion, the judgments are affirmed.

Affirmed.

[Endorsed]: Opinion. Filed Oct. 4, 1946. Paul
P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10942

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon appeal from the District Court of the
United States for the District of Oregon.

This cause came on to be heard on the Transcript
of the Record from the District Court of the United

³See also Railroad Com'n. v. Rowan & Nichols
Oil Co., 311 U. S. 570 (1941); Local Draft Board
No. 1 v. Connors (CCA 9, 1941), 124 Fed 2d 388;
Gudmundson v. Cardillo (CCA D. C., 1942), 126
Fed. 2d 521; Goff v. United States (CCA 4, 1943),
135 Fed 2d 610; United States v. Messersmith (CCA
7, 1943), 138 Fed. 2d 599.

States for the District of Oregon and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Oct. 4, 1946.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday,
March 20, 1947

Before: Stephens, Healy and Bone, Circuit Judges.

[Title of Cause.]

**ORDER DENYING PETITION
FOR REHEARING**

Upon consideration thereof, and by direction of the Court, it is ordered that the petition of appellant, filed January 6, 1947, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

(Clerk's Note: for contents of petition for rehearing, see transcript of record in companion cause, Wesley Wm. Cox vs. U. S. A., pages 64 to 72.)

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED
UNDER RULE 38 OF THE REVISED
RULES OF THE SUPREME COURT OF
THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from and including 1 to and including 67, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 26th day of March, 1947.

[Seal]

PAUL P. O'BRIEN,

Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 9, 1947.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. The case is consolidated for argument with Cox vs. United States and Thompson vs. United States, Nos. 1256 and 1257.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1452)